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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

COMMUNITY ASSOCIATION FOR)
RESTORATION OF THE)
ENVIRONMENT, a Washington nonprofit)
corporation,)

No. 04-cv-3060-LRS

2013 CONSENT DECREE

Plaintiff,)

v.)

SMITH BROTHERS DAIRY, since)
purchased by NELSON FARIA DAIRY,)
LLC.)

Defendants.)

1 WHEREAS the Court entered on January 12, 2012 an Order on Relief and
2 an amended Order on Relief on March 9, 2012;

3 WHEREAS Faria has appealed the Order on Relief to the United States
4 Ninth Circuit Court of Appeals;

5 WHEREAS after consultation with their respective counsel, CARE and
6 Faria (collectively, the "Parties") wish to settle this case to avoid the risks of
7 litigation and appeal and to resolve the controversy between them;
8

9 WHEREAS without any admission by Faria of the facts or violations alleged
10 by CARE in its original Complaint or in its Motion for Contempt, the Parties have
11 agreed to settle their dispute by entering into this 2013 Consent Decree.
12

13 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND
14 DECREED as follows:
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16
17 **General Provisions**

18 1. This Court has jurisdiction over the Parties and subject matter of this
19 action pursuant to 33 U.S.C. § 1365(a), 42 U.S.C. § 9659(c), 42 U.S.C. § 11046(c),
20 28 U.S.C § 1331, and the original Consent Decree. Venue is proper in this Court
21 pursuant to 33 U.S.C. § 1365(c), 42 U.S.C. § 9659(b), 42 U.S.C. § 11046(b), and
22 28 U.S.C. § 1391(b) and § 1395(a), and the original Consent Decree. The Court
23 shall retain jurisdiction to enforce the terms of this 2013 Consent Decree and to
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1 resolve any disputes arising hereunder for the duration of this 2013 Consent
2 Decree.

3 2. This 2013 Consent Decree supersedes all previous orders and
4 judgments entered by this Court, including (without limitation) the original
5 Consent Decree (ECF No. 40), Order on Relief (ECF No. 207), Amended Order on
6 Relief (ECF No. 243) and Order re CARE's Application for Attorney and Expert
7 Witness Fees and Costs (ECF Nos. 290 and 291) (collectively, the "Prior Orders").
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9 This 2013 Consent Decree also supersedes and renders moot all unresolved or
10 carried motions currently pending before this Court, including without limitation,
11 CARE's Petition for Judicial Resolution Pursuant to Paragraphs 28(a) (ECF No.
12 276). This Consent Decree does not vacate the Court's Memorandum of Decision
13 of December 31 (ECF No. 201) or the Order Re Motion for Order of Contempt
14 (ECF No. 123) though it does supersede all remedial relief granted pursuant to
15 those decisions and orders. Faria has appealed these orders, but has agreed to
16 withdraw its appeal without any admission of fault or wrongdoing and in the
17 interests of ending the current dispute.
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22 3. This 2013 Consent Decree shall apply to and be binding upon only the
23 Parties, and upon their successors and assigns. Both parties shall be required to
24 notify one another in writing within thirty (30) calendar days of any successor in
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1 interest or assignment of any rights under this 2013 Consent Decree, providing the
2 relevant documents evidencing that event, i.e., assignment documents. The parties
3 agree that either party's failure to timely comply with this assignment notification
4 requirement voids that party's ability and standing (and/or the ability and standing
5 of any claimed assignee or successor-in-interest) to enforce this 2013 Consent
6 Decree or to otherwise obtain any relief or remedies pursuant to it, but does not
7 otherwise vitiate any party's responsibility to comply with the terms of this Decree.
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10 4. This 2013 Consent Decree shall remain fully operative and
11 enforceable by either Party until January 12, 2015. On that date, either Party's
12 authority and standing to enforce the terms of this 2013 Consent Decree shall
13 irrevocably expire. However, (except as otherwise set forth herein) any material
14 structural or operational modifications implemented by Faria at the Dairy pursuant
15 to any requirement or provision of this 2013 Consent Decree shall remain in place
16 until such time as Faria or any subsequent owner or operator of the Dairy has
17 reasonable cause to materially modify or replace any such structural or operational
18 modification. Faria, or any subsequent owner or operator of the Dairy, shall give
19 written notice to CARE at least 30 days in advance of such material modification
20 or replacement. The notice must expressly state the justification(s) for the
21 modification or replacement. Prior to making the modification or replacement,
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1 Faria, or any subsequent owner or operator of the Dairy, shall obtain an approved
2 and executed Nutrient Management Plan for the Dairy which identifies the material
3 modification or replacement, describes the justification(s) for the change, and
4 evaluates the efficacy of the change against the structural or operational
5 modification(s) imposed by this 2013 Consent Decree. Any sale and/or
6 lease/transfer and/or other change of possession of the Dairy or its property to
7 another entity which at any time operates on the property a concentrated animal
8 feeding operation or "CAFO" shall be subject to these terms and all other terms of
9 this 2013 Consent Decree. Faria shall provide a copy of this 2013 Consent Decree
10 as part of any sale, lease, offer to sell, or any other transfer of Faria's possessory
11 interest in the Dairy and its property, whether in whole or in part.
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15 5. The Dairy is presently located at 11792 Road 12.5 SW, Royal City,
16 Washington.
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18 6. The Dairy meets the federal and state law definitions of a large
19 concentrated animal feeding operation or "CAFO."
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21 7. In operating the Dairy, Faria shall abide by this 2013 Consent Decree,
22 the Federal Water Pollution Control Act ("Clean Water Act"), CERCLA, EPCRA,
23 the Washington General NPDES Permit for CAFOs, the Washington Dairy
24 Nutrient Management Act, RCW 90.64, *et seq.*, and the Dairy's Nutrient
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1 Management Plan. Should any of the terms of this 2013 Consent Decree be stricter
2 than the laws above mentioned, the terms of this 2013 Consent Decree shall be
3 applied.
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5 8. This 2013 Consent Decree may not be modified except by explicit
6 written amendment agreed to by the Parties and approved by the Court.
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8 9. This 2013 Consent Decree constitutes a full, final and complete
9 settlement of all claims, rights, demands, and causes of action of any kind for
10 alleged past violations of any kind that CARE and/or its officers, directors or
11 affiliates (the "CARE Parties") asserted or could have asserted (the "Released
12 Claims") against Faria, Nelson Faria, Jerry Allred, Randy Allred, Wiley Allred,
13 Derek Allred, the J&C Allred Children's Trust, Valley Vista Farms, Allred
14 Brothers, LLC and any of these person or entities' respective directors, officers,
15 employees, members, shareholders, owners, affiliates, operators, managers, agents
16 or control persons ("Faria Parties"). The CARE Parties hereby release all such
17 Released Claims and covenant not to sue the Faria Parties in connection with them.
18 The Released Claims specifically include (without limitation) all claims, whether
19 known or unknown, and whether asserted or unasserted, and specifically include,
20 but are not limited to, claims for civil penalties, attorneys' fees and costs, expert
21 witness fees, injunctive relief, and damages for nuisance, trespass or other
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1 common-law claims arising out of or related to any alleged actions or violations
2 occurring prior to the date of the execution of this 2013 Consent Decree. This
3 release and covenant not to sue specifically includes (without limitation) any
4 alleged violations of the RCRA, CWA, EPCRA or CERCLA. It also includes any
5 alleged violations of the original Consent Decree, the January 12, 2012 Order on
6 Relief, or any other orders entered by the Court occurring on or prior to the date of
7 entry of this 2013 Consent Decree. This settlement, release and covenant not to
8 sue do not release Faria from compliance with this 2013 Consent Decree. This
9 settlement, release and covenant not to sue shall not in any way limit CARE's
10 ability to enforce the terms of this 2013 Consent Decree as to any future violations
11 occurring after the date of entry.
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15 11. For the purposes of this 2013 Consent Decree, the term "manure
16 management" includes, but is not limited to, manure in barns, pens, compost
17 operations, holding facilities, pits, lagoons, storage facilities, piles, and liquid or
18 solid manure that is applied to land.
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21 **National Pollutant Discharge Elimination System Permit**

22 12. Faria shall comply with the terms of the current CAFO General
23 Permit, which has been administratively extended, except those provisions of the
24 CAFO Permit which require compliance with a Nutrient Management Plan (NMP)
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1 approved by Ecology. Until Faria obtains an Ecology-approved NMP, Faria shall
2 comply with its current NMP. When Ecology issues Faria the current CAFO
3 General Permit, Faria shall comply with the terms of that Permit until such time as
4 new CAFO Permit is issued.
5

6 13. Faria shall apply for and obtain any new General CAFO Permit that is
7 released during the term of this Consent Decree.
8

9 14. CARE retains the ability to challenge the provisions and requirements
10 of any General CAFO Permit promulgated by any state or federal agency.
11

12 **Site Inspections and Meeting**

13 15. CARE shall have the right to have four representatives, which may
14 include attorneys or expert consultants, visit and inspect the Dairy up to two (2)
15 times per year, subject to at least 48-hour prior written notice given to Faria on a
16 week day. If a lawyer representing CARE will be attending the inspection, CARE
17 shall provide at least three business days' written notice to Faria. The inspections
18 will be conducted between the hours of 8:00 a.m. and 5:00 p.m., and the CARE
19 representatives will be accompanied at all times by Faria personnel.
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22 16. During an inspection, CARE representatives may view records
23 associated with any obligations set forth in this 2013 Consent Decree, with the
24 exception of records subject to the attorney-client, work product, or consulting
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1 expert privilege. Under no circumstances may the representatives remove records
2 from the Dairy. The CARE representatives may designate records that are not
3 subject to the attorney-client, work product, and/or consulting expert privilege for
4 Faria to copy and provide to CARE at no cost to CARE.
5

6 17. CARE shall inform Faria within thirty (30) calendar days of an
7 inspection undertaken pursuant to paragraph 15 of any violations of any
8 requirement of this 2013 Consent Decree or any conditions which may result in a
9 violation of any requirement of this 2013 Consent Decree. CARE's failure to
10 notify Faria that a specific condition constituted, or may constitute, a violation of
11 this 2013 Consent Decree shall be deemed a waiver of any claim that such
12 condition was in fact a violation, except for latent conditions that a prudent person,
13 in exercising reasonable care and diligence, would not have observed. CARE shall
14 inform Faria within five (5) business days of their visit of any condition that CARE
15 believes could cause or lead to an imminent surface discharge from the Dairy or
16 the Dairy's manure management and application practices in violation of any
17 legally applicable requirement, including any requirement of this 2013 Consent
18 Decree.
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18. The Parties shall meet within one (1) year after the entry of this 2013 Consent Decree at a mutually convenient location to discuss the status of the 2013 Consent Decree's implementation.

19. The site inspections and meetings identified in ¶¶ 15-17 are separate and independent from any other site inspection right CARE is granted in this 2013 Consent Decree. However, any site inspections under this 2013 Consent Decree may be combined upon written consent of the Parties.

Record Keeping

20. Faria agrees to maintain the following records on-site at the Dairy and to provide copies, at no charge, to CARE annually (upon CARE's prior written request) by no later than January 31 of the year following the year in which the information is collected, unless otherwise specified in this 2013 Consent Decree:

- a. Lagoon water quality monitoring data
- b. Off-Site Farmer Certifications.

21. Nothing in ¶ 20 shall relieve Faria from creating, maintaining, and providing to CARE other specific records where such records are specifically required to be created, maintained, and provided by portions of this 2013 Consent Decree.

Lagoon Draw Down & Liner Inspection

1 22. At least once per year, Faria shall use its best efforts to pump down
2 the primary and secondary lagoons such that no more than three feet of liquid
3 and/or solid material remain in the bottom of each lagoon. CARE acknowledges
4 that Faria's ability to pump down the lagoons to this level is dependent upon
5 events and conditions outside Faria's control, including weather conditions that do
6 not permit application, equipment break-down, and/or other events and conditions
7 covered by the force majeure provisions of Paragraph 51. To the extent such
8 events or conditions prevent Faria from drawing down the lagoons below this
9 level, such failure to perform is excused, provided Faria complies with the force
10 majeure notice provisions in Paragraph 51. During this annual draw down, Faria
11 shall use reasonable efforts to rinse the side wall areas of the lagoon liner where
12 tracks have been laid for agitators to be lowered into the lagoons such that these
13 areas may be visually inspected for tears and or breaks in seams. Faria shall then
14 inspect the lagoon liners for tears and other defects. Faria shall repair all tears and
15 defects that are discovered during the inspection.
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- 21 a. Faria shall document the results of inspections and repairs done in
22 accordance with the inspection protocol and shall provide such
23 documentation to CARE within thirty (30) calendar days of
24 completion of inspection and repair.
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1 b. Faria shall notify CARE at least fourteen (14) calendar days in
2 advance of the anticipated date of the annual inspection of the
3 lagoons, and will notify CARE of the date of the annual inspection
4 within 48 hours of the actual inspection time and date and any
5 subsequently scheduled repair appointments. CARE shall be permitted
6 to be present during inspections and repairs if CARE provides Faria
7 with 24-hour written notice of its intent to be present during
8 inspection and repairs. If CARE intends to have one its lawyers
9 present for the inspection or repair, CARE shall provide Faria with at
10 least five business days' notice.

14 **Nutrient Management Plan Compliance**

15 23. Faria shall comply with the handling and storage of manure and liquid
16 wastes in accordance with its approved Nutrient Management Plan (hereinafter
17 "NMP") as it may be amended from time to time.

19 **Manure Management System Updates**

20 24. Within 150 days of the date that this 2013 Consent Decree is entered by the
21 Court, Faria shall install a centrifuge manure separator at the Dairy. CARE
22 understands that Faria meeting this deadline depends upon Faria timely receiving
23 shipment of centrifuge parts and installation occurring without any unanticipated
24 shipment of centrifuge parts and installation occurring without any unanticipated
25 shipment of centrifuge parts and installation occurring without any unanticipated
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1 complications. In the event Faria learns it will not be able to meet this 150 day
2 installation deadline, it will provide CARE with notice of this fact pursuant to the
3 force majeure notice provisions of Paragraph 51. This notice shall provide a new
4 estimated installation completion date and state the reasons for the delay. The
5 specifications for the centrifuge are attached hereto as Attachment A.
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8 **Lagoon Water Quality Monitoring**

9 28. Faria shall monitor the water quality of the Dairy's treatment and
10 storage lagoons by conducting water-quality sampling on a semi-annual basis in
11 March and September.
12

13 29. A composite grab sample will be taken: (1) of the influent to the
14 treatment lagoon; and (2) separately from the effluent from the storage lagoon.
15 "Composite grab sample" shall mean a sample that consists of a mixture of
16 samples taken from different areas of the influent and the effluent.
17

18 30. The samples shall be analyzed by an independent laboratory certified
19 by the State of Washington for wastewater analysis. The samples shall be analyzed
20 for the following parameters:
21

- 22 a. Ammonia;
23 b. Total Phosphorus;
24 c. Dissolved Sulfides;
25 d. pH;
26 e. Temperature;
f. Nitrate;

- g. BOD (total and soluble);
- h. Total Suspended Solids (TSS);
- i. Dissolved Oxygen (DO); and
- j. Volatile Suspended Solids (VSS).

Transfer of Greenwater

31. Faria shall require each farmer who receives or will receive the Dairy's greenwater from the irrigation pipeline(s) to provide Faria with a written certification for each field to be so irrigated, as a condition to receiving the greenwater for that field (the "Off-Site Farmer Certifications"). For the purposes of this paragraph, a "farmer" or "off-site farmer" is a person who grows crops on property not directly owned, leased, or operated by Faria, and "year" shall mean calendar year. The certification shall be in the form included as Attachment B to this 2013 Consent Decree.

32. Faria may only deliver greenwater from the irrigation pipeline to any field for which Faria has received the required Off-Site Farmer Certification. In the event Faria acquires actual knowledge that a farmer has violated a certification requirement for a particular field, Faria shall immediately terminate delivery of greenwater, in accordance with the following procedures:

- a. If a farmer violated a certification requirement in the preceding year and violates the same requirement in the current year on the same field, Faria shall discontinue delivery of greenwater to that field.

1 Deliveries of greenwater may be restored to that field only if Faria
2 receives written confirmation from a professional engineer, licensed
3 in the State of Washington with an environmental discipline (a
4 “Licensed Engineer”), that the farmer has cured the violation and the
5 violation is not likely to reoccur. Faria shall pay the Professional
6 Engineer’s fees and costs if requested by the farmer.
7

8
9 b. If a farmer violates a certification requirement during the current year
10 with no prior violation of the same requirement on the same field
11 for the prior year, Faria shall discontinue delivery of greenwater to
12 that field. Deliveries of green water may be restored to that field only
13 if the farmer confirms to Faria that the violation has been cured and is
14 not likely to reoccur.
15

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17 c. If a farmer commits a second violation of the same certification
18 requirement on the same field during any single calendar year, Faria
19 shall discontinue delivery of greenwater to that field. Deliveries of
20 greenwater may be restored to that field during the current year only if
21 Faria receives written confirmation from a Licensed Engineer that the
22 violation has been cured and is not likely to reoccur.
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25 d. If a farmer commits a third violation of a certification requirement on
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1 the same field during any single calendar year, regardless of whether
2 the certification requirements are related, Faria shall discontinue
3 delivery of greenwater to that field for a minimum of twelve (12)
4 months. Deliveries of greenwater may thereafter be restored to that
5 field only if Faria receives written confirmation from a Licensed
6 Engineer that the violations have been cured and are not likely
7 to reoccur.
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- 10 e. If a farmer commits three or more violations of any certification
11 requirement during the current year, regardless of the field(s) upon
12 which the violations occurred and regardless of whether the
13 certification requirements are related, Faria shall discontinue delivery
14 of greenwater to that farmer for the remaining term of the Consent
15 Decree.
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17

18 **Solid and Liquid Manure Field Application**

19 33. Faria shall monitor and document its application of solid and liquid
20 manure in accordance with its NMP so as not to overload its Fields with nutrients.
21 As used herein, "Fields" or "Field" includes only those fields directly owned by
22 Faria. Accordingly, none of the provisions, obligations or monitoring and
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1 reporting requirements set forth in Paragraphs 34-38 below shall apply to any
2 fields owned by any person or entity other than those owned directly by Faria.

3 34. Faria shall conduct sampling twice annually on Fields receiving solid
4 and liquid manure before each application season, generally in March and October
5 for the duration of this 2013 Consent Decree.
6

7 35. Within thirty (30) calendar days from the receipt of analytical data
8 collected from the soil sampling, Faria shall take the following actions for Fields
9 receiving solid and liquid manure before the application of solid or liquid manure
10 to such Fields:
11

- 12
- 13 a. Calculate the appropriate manure application rates and quantities for
14 available Fields using the National Resource Conservation Service
15 ("NRCS") Dairy Waste Collection Worksheet based on the data
16 collected from the soil sampling plan.
17
 - 18 b. Identify Fields receiving manure, by Block, Unit and Field number,
19 and present the boundaries on a topographic map showing farm and
20 associated Fields.
21
 - 22 c. Describe overland surface water flow across the farm and Fields,
23 including a description of the surface water body receiving overland
24 flow (if any).
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- d. Identify known tile drains on Fields receiving manure or liquid waste.
- e. Locate and show on maps irrigation wells and drinking water within one mile of the production or land application areas.
- f. Characterize the dominant soil series, associated key nutrient and infiltration-related characteristics, and cropping based on the soil survey.
- g. Evaluate leaching index to evaluate the potential for groundwater contamination for soluble nutrients.
- h. Create a table describing the applicable state/NRCS setback criteria and distance for identified sensitive areas.
- i. Describe the soils in both narrative and tabular form.

36. Faria shall submit the information identified in ¶ 35 associated and paired with each Field, which shall be identified by total acreage block, unit and Field number, to CARE at least ten (10) calendar days before applying liquid or solid manure to those Fields, and shall provide the following information in written format:

- a. A section that describes the amount of solid or liquid manure that may be applied to the Field so as to not overload the Field with

1 nutrients based on NRCS calculations per crop. Application
2 inspection forms to document the following during application:

- 3 i. Inspector's name;
4
5 ii. Application date;
6
7 iii. Field designation;
8
9 iv. Photographs and written description of physical Field
10 conditions at the start of application;
11
12 v. Weather conditions at the start of application;
13
14 vi. Application method;
15
16 vii. Application start time;
17
18 viii. Application rate;
19
20 ix. Application completion time.

21 b. CARE shall have ten (10) calendar days to review and comment on
22 Faria's proposed protocols. Any dispute shall be subject to dispute
23 resolution.
24

25 c. Faria shall not apply solid or liquid manure to any Field when the soil
26 phosphorus or nitrate concentrations in the upper 10-12 inches of soil
exceed the optimum concentration for crop growth based on NRCS
nutrient criteria for the relevant crop. If levels of nitrate or

1 phosphorous exceed optimum growth numbers at either the 2 or 4 foot
2 level, then no manure may be added. There shall be no manure
3 applications where Ammonium N and Nitrate N combined are at or
4 exceed crop needs. In addition, there shall be no application of solid
5 or liquid manure if: 1) Nitrate results, as expressed by concentration in
6 the soil solution based on the soil moisture content, exceed 10 mg/liter
7 Nitrate N at the 4 foot depth; or 2) if the top one foot phosphorus
8 levels exceed 30 mg/l.
9

10
11 37. Faria shall maintain the inspection records on-site and submit the
12 records to CARE by May 15th for the period from November 1st to April 30th, and
13 by November 15th for the period from May 1st to October 30th, for each year for
14 the duration of this 2013 Consent Decree.
15

16
17 38. Faria shall monitor and maintain documentation of the application of
18 solid and liquid wastes to off-site Fields authorized under Off-Site Farmer
19 Certifications by maintaining off-site manure management forms that include the
20 following information:
21

- 22 i. Farm receiving the liquid and/or solid manure;
- 23 ii. Transfer method descriptions (e.g., pipeline, truck, etc);
- 24 iii. Map identifying the location and acreage of crop and forage
- 25
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1 fields;

- 2 iv. A description of the application method(s) and the rate of
3 application (if known).
4

5 For applications to Fields that occur more than 10 calendar days apart, Faria shall
6 include sample analyses of each manure application event for total Nitrogen,
7 Ammonium N, Nitrate plus Nitrite N, Total Phosphorus, and Total solids.
8

9 **Operations and Maintenance Manual**

10 39. Faria has prepared an operations and maintenance manual (hereinafter
11 "O&M"), which has been reviewed and approved by CARE. Faria shall operate
12 the lagoon system in accordance with the O&M, maintain records of all operation
13 and maintenance, and provide such records to CARE annually (upon CARE's prior
14 written request).
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17 **Employee Training Requirements**

18 40. Faria has developed a bi-lingual training program for new employees
19 and an annual refresher training program for current employees. The program
20 applies only to those employees who are responsible for manure and wastewater
21 management, including lagoon sampling/level measurements, equipment
22 operations and calibration, manure land-application, manure composting, and NMP
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1 maintenance and revision requirements. CARE has reviewed and approved this
2 training program.

3 41. Faria has conducted training for all employees using this approved
4 training program during 2012. Upon request by CARE, training documentation
5 for 2013 and 2014 shall be submitted to CARE.
6

7 **EPCRA Reporting**

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9 42. Faria shall comply with the U.S. Environment Protection Agency's
10 ("EPA") regulations governing the release of extremely hazardous substances or
11 CERCLA hazardous substances under 40 C.F.R. Part 355, EPCRA's reporting
12 rule. Faria shall also comply with the emergency release and notification
13 requirements of EPCRA.
14

15 43. For the duration of this 2013 Consent Decree, Faria shall provide to
16 CARE copies of the notifications, documents, or other evidence of reporting
17 (including evidence of phone calls) Faria provided to the state emergency response
18 commission and any appropriate local emergency planning commission under the
19 EPCRA reporting rule or any other reporting requirement. The copies shall be
20 provided to CARE within thirty (30) calendar days of Faria's reporting.
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23 **Herd Size**

1 44. Faria shall not expand the herd size beyond 10,440 Animal Units for
2 the duration of this 2013 Consent Decree.

3
4 **Groundwater Monitoring**

5 45. Faria has installed and shall maintain through the term of this 2013
6 Consent Decree the two environmental monitoring wells at each of the following
7 sites:

- 8
9 i. Downgradient of the treatment lagoons;
10 ii. Downgradient of the dry feed lots;
11 iii. A site located north of and between the two monitoring sites
12 downgradient of the feed lots but just south of the canal where
13 the “North Field” pond was present.
14

15 46. Faria shall continue to have Associated Earth Sciences (or another
16 qualified entity) sample these groundwater wells every two months (six times per
17 year). Following the expiration of this 2013 Consent Decree on January 12, 2015,
18 Faria shall have no obligation to maintain these wells and its obligation to perform
19 any further sampling shall immediately terminate. Accordingly, after January 12,
20 2015, Faria may remove these wells at its sole and absolute discretion without
21 having to comply with any of the provisions of Paragraph 4 herein. Analyses must
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be performed at a lab certified by the State of Washington using EPA approved methods with the minimum detection limits listed below.

<u>Parameter</u>	<u>Practical Quantification Limit</u>
Nitrate Plus Nitrite Nitrogen	0.1 mg/l
Ammonium Nitrogen	0.1 mg/l
Chloride	0.1 mg/l
Sodium	0.1 mg/l
Potassium	0.1 mg/l
Calcium	0.1 mg/l
Magnesium	0.1 mg/l
Specific Conductance	10 umhos/cm
Total Phosphorus	0.01 mg/l
pH	.1 pH unit
Alkalinity	1 mg/l
Sulfate	1 mg/l
e-coli	<2 cfu/100ml

Legal Expenses & Costs

47. In the interests of settling the present dispute and without any admission of wrong-doing or liability of any kind, Faria has agreed to pay CARE a sum of money set forth in a separate agreement intended to compensate for CARE certain reasonable fees and costs incurred in this case through the date of the entry of this Order. Going forward, the parties shall bear their own fees and costs incurred in connection with fulfilling their duties and/or implementing or enforcing the terms of this 2013 Consent Decree. Accordingly, the Parties agree that neither will seek nor request from the Court any award of fees or costs in connection with

1 any motion or proceedings related to the implementation or enforcement of this
2 Decree.

3
4 **Dispute Resolution**

5 48. The parties agree that any disputes as to the meaning, application or
6 enforcement of this 2013 Consent Decree shall be resolved in accordance with the
7 following subsection a, which shall be the exclusive mechanism to resolve such
8 disputes.
9

10 a. Any dispute that arises with respect to the meaning, application or
11 enforcement of this 2013 Consent Decree shall initially be subject to a period of
12 informal negotiations, which period shall not extend beyond thirty (30) days from
13 the date the dispute arises, unless the parties otherwise mutually agree in writing to
14 an extension of the period. A dispute shall be considered to have arisen on the date
15 a party receives (either by email or other means) written notification from the other
16 that a dispute has arisen, which notice shall specifically reference this Section of
17 the 2013 Consent Decree. In the event that the parties are unable to resolve the
18 dispute informally, the Party invoking the dispute resolution process shall serve a
19 written statement of its position upon the other party. That statement shall be
20 considered final and binding unless, within thirty (30) days after receipt of the
21 statement, the other party shall file with the Court and serve upon counsel for the
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1 other party a petition for judicial resolution of the dispute. The petition shall refer
2 to this Section of the 2013 Consent Decree and shall set forth the nature of the
3 dispute, the efforts made by the parties to resolve the dispute, the evidence upon
4 which the party's position is based (if any), and a proposal for its resolution.
5

6 b. Within twenty-one (21) days following receipt of a petition the other
7 party may file a responsive memorandum, setting forth that party's position, the
8 evidence upon which the party's position is based (if any), and a proposal for its
9 resolution. The party that initially files the petition may, but shall not be required
10 to, file a reply memorandum within fourteen (14) days after receipt of the
11 responsive memorandum. Each party shall bear the burden of proving any
12 disputed fact upon which it bases its position by a preponderance of the evidence.
13 The filing of a petition for dispute resolution shall not relieve either party of its
14 obligations under this 2013 Consent Decree.
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18 **Force Majeure**

19 49. Faria's obligation to comply with the requirements of this 2013
20 Consent Decree shall be deferred, modified, or excused to the extent caused by a
21 force majeure. Force majeure, for purposes of this 2013 Consent Decree, is defined
22 as any event arising from causes beyond the control of Faria, that delays or
23 prevents the performance of any obligation required by this 2013 Consent Decree,
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1 despite Faria's best efforts to comply with the Order. Force majeure includes, but
2 is not limited to:

3 a. Delays caused by government agencies, including but not limited to
4 Grant County and the Department of Ecology, in reviewing, approving or
5 modifying documents submitted by Faria;
6

7 b. Delays caused by third parties that prevent the Dairy from securing
8 necessary supplies, materials, or products;
9

10 c. Delays caused by the failure of CARE or its consultants in fulfilling its
11 obligations under this Order;
12

13 d. Delays necessitated by circumstances that pose an imminent threat to
14 public health, safety or the environment;
15

16 e. The intentional acts or omissions of third parties that cause injury or
17 damage to the Dairy facility or its operations;
18

19 f. Government acts, legislation or regulations affecting the CAFO industry
20 that affirmatively prohibit any action required by this Order;

21 g. Acts of God, including fire, flood, weather conditions, equipment failure,
22 and/or other unavoidable casualties.
23

24 50. Delays caused by any force majeure acts shall be documented by
25 Faria and an explanation shall be provided in writing to CARE's representatives
26

1 within ten (10) business days of the condition giving rise to the act alleged to be
2 force majeure. Failure to provide the above mentioned documentation and
3 notification to CARE shall be deemed a waiver of this provision.
4

5 **Miscellaneous**

6 51. All notifications and all records required to be provided, including all
7 documents required to be provided by Faria to CARE, shall be provided by
8 electronic means unless otherwise not available.
9

10 52. CARE shall act as a single legal entity with respect to all notices,
11 review and commenting, reporting requirements, decisions, and other actions taken
12 under this 2013 Consent Decree. No individual member of CARE is authorized to
13 modify or waive any requirement or provision of this 2013 Consent Decree. No
14 individual member of CARE is authorized to accept any notice under this 2013
15 Consent Decree on behalf of CARE. Notwithstanding the foregoing, CARE
16 appoints Gary Christensen as its agent to act on behalf of CARE in its dealings
17 with Faria. CARE may appoint a new designated agent by providing Faria with
18 written notice of that designation, which notice shall contain that person's name
19 and contact information. Such agent shall be a resident of Grant County,
20 Washington.
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1 53. Faria shall not be answerable to any individual CARE member in
2 complying with this 2013 Consent Decree. Further, the Parties agree that this 2013
3 Consent Decree imposes obligations only on the Parties themselves and that no
4 other entity or persons other than the Parties to this action shall have power to
5 enforce the terms of this 2013 Consent Decree (including any of the individual
6 members of CARE), except for the Parties' respective successors-in-interest and/or
7 assignees, so long as timely notification is provided in compliance with Paragraph
8
9 3.
10

11 54. Each party acknowledges and represents that they have relied on the
12 legal advice of their attorney, who is the attorney of their own choice and that the
13 terms of this 2013 Consent Decree have been completely read and explained to
14 them by their attorney and the terms are fully understood and voluntarily accepted.
15
16

17 55. If the Court should decline to approve this 2013 Consent Decree in the
18 form presented, the Parties agree to negotiate in good faith in an attempt to cure
19 any objections raised by the Court to the entry of this 2013 Consent Decree in a
20 manner most consistent with the terms of the Parties' agreement.
21

22 56. The Parties agree this 2013 Consent Decree constitutes the final,
23 complete, and exclusive agreement and understanding of the Parties with respect to
24 the subject matter of this Action. The Parties acknowledge that there are no
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1 representations, understandings, or obligations relating to this action other than
2 those expressly contained in this 2013 Consent Decree and that neither Party is
3 relying upon any representations, understandings, or agreements except for those
4 set forth expressly herein. The Parties agree and acknowledge that only those
5 terms and obligations expressly set forth in this 2013 Consent Decree shall be
6 enforceable in this action.
7

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9 57. Each party represents and warrants that it is in good standing and has
10 the legal authority to enter into this 2013 Consent Decree and to bind itself thereto.
11 Each party represents and warrants that it is acting on its own behalf and not on
12 behalf of other parties in entering into this 2013 Consent Decree. Each Party
13 represents and warrants that the Party representative signing below on behalf of the
14 Party has the authority to bind that Party. Each Party represents and warrants that
15 it is the sole and exclusive owner of the rights created by or arising under this 2013
16 Consent Decree and that neither has assigned its respective rights to enforce this
17 2013 Consent Decree or any other prior order or judgment entered by this Court
18 (including, without limitation, the Prior Orders) to any other person or entity.
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22 58. Whenever notice is required to be given or a document is required to
23 be sent by one Party to another under the terms of this 2013 Consent Decree, it
24 shall be directed to all the individuals at the addresses specified below, unless prior
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1 notice of a change has been given to the other Party. A notice shall be deemed
2 sufficient under this 2013 Consent Decree if it is provided in writing through the
3 U.S. mail, hand-delivered, or provided electronically by e-mail or facsimile. In the
4 event that a notice or document is provided by U.S. mail, it shall be considered
5 effective upon receipt. Otherwise, all other notices or documents are considered
6 effective upon sending.
7

8
9 As to CARE:

10 Charlie Tebbutt
11 941 Lawrence St
12 Eugene, OR 97401
13 541-344-3505 (P)
14 541-344-3516 (F)
charlie.tebbuttlaw@gmail.com

Gary Christensen
12486 Road E, SW
Royal City, WA 99357
hfarms@smwireless.net

15 As to Faria:

16 Jeremy Fielding
17 Lynn Tillotson Pinker & Cox, LLP
18 2100 Ross Ave, Suite 2700
19 214-981-3803 (P)
20 214-981-3839 (F)
jfielding@lynnllp.com

21 Lori Terry
22 Foster Pepper PLLC
23 1111 3rd Avenue Seattle, WA 98101
24 206-447-8902
25 509-777-1616
TerrL@foster.com
26

1 Jerry Allred
2 8002 Adams Road South
3 Royal City, WA 99357
4 509-750-1287
5 jallred@smwireless.net

6 WE HEREBY CONSENT to the entry of the 2013 Consent Decree:

7 Dated and entered this 3rd day of April 2013.

8
9 s/Lonny R. Suko

10
11 LONNY R. SUKO

12 United States District Judge

13 Plaintiff COMMUNITY ASSOCIATION FOR RESTORATION OF THE
14 ENVIRONMENT, INC.
15

16 Signature: Helen Reddout

17 Name: Helen Reddout

18 Title: President
19

20
21 Defendant NELSON FARIA DAIRY, LLC

22
23 Signature: Jerry Allred

24 Name: Jerry Allred

25 Title: Partner
26

ATTACHMENT A:

Centrifuge Specifications

Type: Centrisys Centrifuge System, Model No. CS26-4.

Vendor: Dairy Specialists
3309 Empire Street
Evans, CO 80620
Ph (970)33-1870

Centrifuge Installation and Operation: The centrifuge will be installed within the Dairy's existing system to extract solids from wastewater generated by Dairy activities. Once treated, this wastewater will either be recirculated as flush water for the freestall barns or pumped into the treatment lagoon. Faria has previously provided (and CARE acknowledges receiving) information on February 15, 2013 from the vendor documenting the vendor's conclusions regarding the general effectiveness of the centrifuge system. Faria makes no representations or warranties regarding the accuracy of this information provided by the vendor.

Extracted Solids Disposal: Separated material will be either used as bedding in the freestall barns or removed by third party compost companies. Separated material awaiting removal by third party compost companies will be stored on an outdoor impervious surface. Faria will use its best efforts to ensure this separated material awaiting removal is regularly removed so as to prevent the stored material from exceeding the impervious surface area.

ATTACHMENT B

OFF-SITE FARMER CERTIFICATION

Name: _____

Field: _____

I hereby certify as follows with respect to the delivery by Nelson Faria Dairy of greenwater from the Dairy's irrigation pipeline to my field identified above:

1. I have inspected the field with respect to: (a) the general soil and field conditions, including the presence of crops and any evidence of erosion or over-saturation; and (b) the existence and condition of water management runoff controls, including berms and tailwater recover ponds, where appropriate;

2. For rill-irrigated fields, that tailwater recovery ponds, berms or filter strips are present where necessary to protect surface water from discharges of greenwater;

3. There are no conditions in the field that pose a significant threat of discharge of greenwater to surface waters;

4. The field has been tested at least twice annually for Nitrate/Nitrite and

5. I will make best efforts to apply greenwater at agronomic rates;

6. Greenwater shall not be applied on frozen ground; and

7. Greenwater shall not be applied in wet conditions, if there would be a significant risk of over saturation.

DATE: _____

SIGNATURE: _____